FILED
DEC 31 1953
HAROLD B. WILLEY, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1950.

No. 5, Original.

STATE OF NEW JERSEY,
Complainant,

against

STATE OF NEW YORK and CITY OF NEW YORK,
Defendants,

COMMONWEALTH OF PENNSYLVANIA,
Intervenor.

ANSWER OF THE STATE OF NEW JERSEY TO THE AMENDED PETITION OF THE CITY OF NEW YORK

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APPEAL PRINTING CO. INC., 130 CEDAR ST., NEW YORK, WORTH 4-3033

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The State of New Jersey answering the Amended Petition of the City of New York respectfully says that:

1. The State of New Jersey (hereinafter called "respondent") raises no objection to Paragraph 1 of the Amended Petition (hereinafter called "petition") provided the said proposed diversion is made exclusively within the State of New York and provided that adequate compensation release flows to augment the low flow of the Delaware River be made by the City of New York.

2. Respondent admits Paragraph 2.

3. Respondent admits Paragraph 3 of the petition, but avers that the decree (283 U. S. 805) was based upon the finding by the Special Master that the then proposed diversion of 600,000,000 gallons of water daily by petitioner was excessive and that such diversion be reduced to the point where it is clear that the amount permitted to be taken would not inflict substantial damage to New Jersey or its citizens and would not deprive New Jersey of any greater part of the benefits of the Delaware River than the State of New Jersey should be expected, in all equity, to yield to the other states having a common interest in the river. The effect of the decree was that any diversion by the City of New York of more than 440,000,000 gallons daily under the release formula adopted by the Court would indicate a substantial damage to New Jersey and its citizens and a greater damage than New Jersey should be required to bear.

4. Respondent admits the allegations of Paragraph 4.

5. Respondent does not admit that New York City's water supply facilities are overtaxed. Respondent recognizes the duty of each state to plan, build and construct the water supply facilities which each state estimates that it may need to meet its future anticipated increased population and industrial water demands. Respondent is not convinced of the City of New York's estimated future requirements. Respondent, however, does concur with the petitioner in its object, to prepare adequate water facilities for its population. Respondent contends that the City and State of New York should be permitted to make the diversion conditioned, however, upon providing adequate release flows for the State of New Jersey and other interested states. That the City and State of New York be limited to this diversion from the Delaware River for any future requirements of the City and State of New York and not beyond the 800,000,000 gallons a day presently applied for.

The respondent estimates that its growth and its industrial development indicates an equal or greater need at the present time than that of the City of New York. Respondent avers that its need for immediate water developments is more critical than that of the City of New York, but advocates co-operation between the states having a common interest in the Delaware River by taking into consideration their present and future reasonable needs but without unduly injuring the flow of the river. Respondent avers that the states having a common interest be entitled to satisfy their reasonable water needs from the river but at the same time requiring adequate provision be made for augmenting the river during periods of low flow, but permitting diversions during periods of excessive flow.

6. Respondent admits Paragraph 6.

7. Respondent is without sufficient information to form a belief as to the allegations of Paragraph 7 and, therefore, leaves petitioner to its proofs thereof.

8. Respondent is without sufficient information to form a belief as to the allegations of Paragraph 8 and, therefore, leaves petitioner to its proofs thereof.

9. Respondent is without sufficient information to form a belief as to the allegations of Paragraph 9 of the amended petition, and leaves petitioner to its proof thereof.

10. Respondent is without information sufficient to form a belief as to the allegations of Paragraph 10 of the amended petition and therefore leaves petitioner to its proof thereof.

11. Respondent is without sufficient information to form a belief as to the allegations of Paragraph 11 and, therefore, leaves petitioner to its proofs thereof.

12. Respondent is without sufficient information to form a belief as to the allegations of Paragraph 12 and, therefore, leaves petitioner to its proofs thereof.

13. Respondent is without sufficient information to form a belief as to the allegations of Paragraph 13 and, therefore, leaves petitioner to its proofs thereof.

14. Respondent avers that if the proposal of the petitioner is granted by this Court that the petitioner shall be directed to forthwith proceed with the proposed construction as specified in Paragraph 14.

15. Respondent in the original action denied that diversion by the petitioner from the Delaware River was the most feasible and practical plan for the future water supply needs of the City of New York. Since the Court has indicated in its opinion (283 U. S. 336) that the petitioner has the right to choose the source of its water supply without regard to the economics of the proposal, the respondent in conformance with that ruling does not seek to relitigate that issue at this time. Respondent alleges that although the petitioner has many alternate sources of water supply other than the Delaware River and its tributaries, the respondent, on the contrary, because of its geographical and topographical features, is much more limited in obtaining water from sources other than the Delaware River. Respondent alleges that any future water developments other than that applied for by the petitioner should be made from sources other than the Delaware in order that the rights and needs of the State of New Jersey and the other states having a common interest be fairly and equitably preserved.

16. The respondent alleges that the extent and manner of release flows by the petitioner are of the utmost importance to it and the other states having a common interest in the river. Respondent alleges that the release formula in

the original decree has and will prove to be inadequate. Respondent alleges that any diversion beyond the 440,000,000 gallons daily permitted by the original decree, without substantially modifying the release formula upwards, would be detrimental to the interests of the State of New Jersey. The proposed release formula in paragraph 21 of the amended petition will minimize the damage to New Jersey and will substantially improve the flow of the river during dry periods and thereby provide substantial quantities of water to be made available for the respondent and the other states having a common interest in the river.

17. Respondent admits Paragraph 17.

18. Respondent admits Paragraph 18.

19. Respondent admits Paragraph 19.

20. Respondent admits Paragraph 20.

21. Respondent does not object to the substitution of the proposed formula of release contained in Paragraph 21 of the amended petition.

22. Respondent admits Paragraph 22.

23. Respondent admits Paragraph 23.

24. Respondent admits Paragraph 24.

25. Respondent alleges that Delaware River was and is the main source of water supply of the Delaware and Raritan Canal and feeder, which extends from Raven Rock on the Delaware River to New Brunswick on the Raritan River. The Delaware and Raritan Canal and feeder were constructed about 1834, and said canal was originally used for the purposes of navigation. Approximately 200,000,000 gallons of water a day were diverted from the Delaware River for use in the canal and were not returned to the river but were diverted from the Delaware watershed.

After the canal ceased to be used for navigation purposes, the respondent acquired ownership of the canal and authorized its use for domestic and industrial water supply purposes. At the present time, approximately 30,000,000 gallons daily or more are used for these purposes and this use will naturally increase. Respondent claims the historical right to use upwards of 200,000,000 gallons daily from the Delaware River. This diversion of upwards of 200,000,000 gallons daily was made from the Delaware River below the point of diversion proposed in the New York City plans. Respondent alleges that its immediate needs will exceed 100,000,000 gallons daily and desires adjudication of its right to divert 100,000,000 gallons daily without compensation releases from the Delaware River watershed, as a part of its fair and equitable share of waters of the Delaware River. Such diversion of 100,000,000 gallons daily shall be determined on a monthly basis, the maximum diversion on any particular day not to exceed 120,000,000 gallons. When the flow of the river is improved by petitioner's proposed releases, the respondent's diversion will not impair the river, but will still provide the river with a better flow than that which would result from the release formula in the 1931 decree of this Court. For that purpose, respondent urges the Court to retain jurisdiction and control over the use of the waters in the Delaware River by any of the states involved in these proceedings.

26. Respondent urges that this Court reaffirm the intent of the previous decree, namely, that any diversion by either of the states shall not constitute a prior appropriation. Respondent further urges that the respondent and the Commonwealth of Pennsylvania each be permitted to take from the Delaware River any of their requirements, so long as they do not unduly injure the rights of any of the states involved. That if any taking by the respondent beyond

200,000,000 gallons a day as alleged aforesaid should create any undue damage to the Commonwealth of Pennsylvania, that the latter state shall at all times have the right to petition this Court for relief. Similarly, respondent urges this Court to decree that if the Commonwealth of Pennsylvania in meeting its water needs shall unduly injure either of the states involved by any diversion, that such injured state shall have the right to petition this Court for relief.

27. Respondent urges that this Court decree that the diversion by either state shall not give any superiority of right over any other state in the enjoyment and use of the Delaware River and its tributaries.

28. Respondent requests that all uses of the waters of the Delaware River and its tributaries by municipalities or other governmental agencies, industries or persons, in the Delaware River watershed, in the State of New Jersey and in the Commonwealth of Pennsylvania, in the manner presently exercised shall continue as heretofore and should not be included in the fair and equitable shares of the State of New Jersey and the Commonwealth of Pennsylvania.

29. Respondent requests that this Court enter a decree allocating and determining a flexible and equitable apportionment of the available water supply from the Delaware River commensurate with the needs of the respective states except that the City and State of New York be limited to the proposed application for any of its future needs in view of the availability of other sources of water supply to that city and state.

30. The decree of this Court shall continue to contain the substance of Paragraph 6 of the present decree as follows:

> "6. Any of the parties hereto, complainant, defendants or intervenor, may apply at the foot of this decree for other or further action or relief and

this court retains jurisdiction of the suit for the purpose of any order or direction or modification of this decree, or any supplemental decree that it may deem at any time to be proper in relation to the subject-matter in controversy."

Respectfully submitted,

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